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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

ORLANDO CASANOVA TORRES,

Defendant and Appellant.

F077520

(Super. Ct. No. HC015579A)

OPINION

THE COURT*

APPEAL from an order of the Superior Court of Kern County. Michael E. Dellostritto, Judge.

Gregory L. Cannon, under appointment by the Court of Appeal, for Defendant and Appellant.

Office of the State Attorney General, Sacramento, California, for Plaintiff and Respondent.

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* Before Franson, Acting P.J., Peña, J. and Snauffer, J.

STATEMENT OF APPEALABILITY

This appeal is from the denial of a petition for writ of error coram nobis and is authorized by Penal Code section 1237.¹ (*People v. Gallardo* (2000) 77 Cal.App.4th 971, 982.)

STATEMENT OF THE CASE

On or about September 16, 1982, appellant Orlando Casanova Torres was charged by information with two counts alleging the commission of lewd acts on a child under the age of 14 (§ 288, subd. (a); counts 1 & 3), two counts of forcible rape (former § 261, subd. (2); counts 2 & 4), incest (§ 285; count 5), and child endangerment (former § 273a, subd. (2); count 6).

On or about November 17, 1982, Torres pleaded guilty to one count alleging a violation of section 288, subdivision (a). In exchange for his plea, the parties agreed that the remaining counts would be dismissed and Torres would not be sentenced to more than three years in state prison.

On or about January 17, 1983, Torres filed a declaration in support of his motion to withdraw his plea. On March 23, 1983, the trial court denied Torres's motion and sentenced him to three years in state prison.

On June 23, 2017, Torres filed a "Motion for Writ of Error Coram Nobis under Penal Code § 1018." Torres's motion asserted three grounds for relief: His plea was not knowing and voluntary, he was factually innocent, and there was not a factual basis for the plea.

The superior court deemed Torres's motion to be a petition for writ of habeas corpus. The court denied the petition without prejudice and "remanded" the matter to "the criminal court" for argument on the coram nobis petition.

¹ Subsequent statutory references are to the Penal Code.

The hearing on Torres's petition commenced on February 1, 2018. During that hearing, David Candelaria, the attorney who represented Torres at the time of his plea, testified that Torres spoke English "very well" during Candelaria's representation. Candelaria testified that there was no need for a Spanish language interpreter. Candelaria denied that he whispered in Torres's ear, telling him what to say, during the change of plea. Candelaria testified that he would not have proceeded with Torres's plea without an interpreter, if one were necessary, because to do so would have been unethical and would constitute malpractice.

Zaida Torres, Torres's wife of 35 years, testified that he was honest and always told the truth. Zaida was from Bolivia. She testified that the Spanish language was different in different countries, and that the Spanish spoken in Puerto Rico, her husband's place of origin, was "completely different." Zaida sometimes did not understand words Torres used and had to ask him to repeat the word.

On March 19, 2018, the trial court denied Torres's petition by written order. The court noted that Torres was claiming that his plea was not knowing and voluntary due to the trial court's failure to provide an interpreter. The court found that the prosecution had refuted this claim during the hearing on Torres's petition. The court noted that Torres appeared without the assistance of an interpreter during many court hearings. The court held both that Candelaria's testimony that Torres spoke English well was credible, and that Torres's denial was not. The court also held that Torres had failed to establish that he acted with due diligence after failing to bring the issue before the court for 34 years.

On April 18, 2018, Torres filed a motion for reconsideration of the trial court's ruling based on its misunderstanding of the impact of Torres's military service on the question of whether he was proficient in the English language. Torres argued that he had been unable to complete boot camp and was discharged from the military after only three months of actual service due to his poor English skills.

On May 8, 2018, the trial court denied Torres's motion for reconsideration by written ruling.

On May 17, 2018, Torres filed a notice of appeal and requested the issuance of a certificate of probable cause. The trial court granted that request.

STATEMENT OF FACTS

The parties stipulated to a factual basis for Torres's plea. (See *People v. Palmer* (2013) 58 Cal.4th 110, 118.)

APPELLATE COURT REVIEW

Torres's appointed appellate counsel has filed an opening brief that summarizes the pertinent facts, raises no issues, and requests this court to review the record independently. (*People v. Wende* (1979) 25 Cal.3d 436.) The opening brief also includes the declaration of appellate counsel indicating that Torres was advised he could file his own brief with this court. By letter on December 19, 2018, we invited Torres to submit additional briefing. To date, he has not done so.

After independently reviewing the entire record,² we have concluded there are no reasonably arguable legal or factual issues.

DISPOSITION

The order is affirmed.

² The record in this case consisted of three volumes of reporter's transcript, the 76-page clerk's transcript (CT), and the augmented clerk's transcript filed November 21, 2018. Of particular importance were the trial court's comprehensive written rulings regarding the writ of error coram nobis (CT pgs. 55-61 and 68-70).